

Notice of Allowability	Application No.	Applicant(s)	
	09/614,631	HILGREN ET AL.	
	Examiner	Art Unit	
	JOHN PAK	1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--
 All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Applicant's response of 5/25/2006.
2. ☒ The allowed claim(s) is/are 1-2,35-36,3,37-38,6,39,8,41,31,43-46 [renumbered as 1-16].
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).


* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☒ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☒ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☒ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. <input type="checkbox"/> Notice of References Cited (PTO-892) 2. <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | <ol style="list-style-type: none"> 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____ 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance 9. <input type="checkbox"/> Other _____ |
|--|--|


 JOHN PAK
 PRIMARY EXAMINER
 GROUP 1600

Claims 1-3, 6-9, 31 and 35-46 are pending in this application. This Office action is in response to applicant's response of 5/25/2006.

The terminal disclaimer filed on 5/26/2006 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent No. 6,024,986 has been reviewed and is accepted. The terminal disclaimer has been recorded.

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. Skoog on 8/7/2006.

CANCEL claims 7, 9, 40 and 42.

Claim 6. (Currently amended) An antimicrobial concentrate composition comprising:

an equilibrium mixture resulting from a composition of about 54 weight-% acetic acid, about 14 weight-% octanoic acid, about 10 weight-% hydrogen peroxide, and about 0.6 weight-% chelating agent;

wherein the equilibrium mixture comprises at least about 1 part by weight of peroxyoctanoic acid for each about 5 parts of peroxyacetic acid.

Claim 8. (Currently amended) An antimicrobial concentrate composition comprising:

about 54 weight-% acetic acid, about 14 weight-% octanoic acid, about 10 weight-% hydrogen peroxide, and about 0.6 weight-% chelating agent;

wherein the composition comprises at least about 1 part by weight of peroxyoctanoic acid for each about 5 parts of peroxyacetic acid.

Prosecution history in this application is sufficient to establish the allowability of the instant claims, as presently amended. The declaration filed on 5/25/2006 under 37 CFR 1.131 and applicant's objective evidence of record are sufficient to overcome the U.S. Patent No. 6,024,986 reference with respect to claims 7 and 9¹. Allowance of claims 6, 8, 39 and 41 is not based on applicant's antedating of U.S. Patent No. 6,024,986. By this Examiner's Amendment, features of claims 7 and 9 have been incorporated into independent claims 6 and 8, respectively. Hilgren declarations of 2/9/2004 and 8/5/2005 are noted: they show that the inventive features provide advantages over that of similar compositions that do not possess the claim-required peroxyoctanoic acid to peroxyacetic acid ratio. Although the 8/5/2005 declaration was filed under 37 CFR 1.131 to overcome a reference, the objective evidence declared therein is deemed to be sufficient. See MPEP 715.01(a), which *analogously* authorizes

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a declaration filed under Rule 131 to be treated as though it were filed under Rule 132.

Claim 8 is interpreted to mean that the concentrate composition does contain peroxyoctanoic acid and peroxyacetic acid at the ratio set forth in the last two lines of the claim text.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to JOHN PAK whose telephone number is **(571)272-0620**. The Examiner can normally be reached on Monday to Friday from 8 AM to 4:30 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's SPE, Johann Richter, can be reached on **(571)272-0646**.

The fax phone number for the organization where this application or proceeding is assigned is **(571)273-8300**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571)272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.


¹ Claims 7 and 9 were rejected only under 35 USC 103, i.e. not under any sections of 35 USC 102.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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